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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,)
9 Respondent,) NOS. CR-05-0105-LRS
CV-06-0133-LRS
10 -vs-)
11 RAUL S. ZAVALA,) ORDER DENYING 28 U.S.C. §2255
12 Petitioner.) MOTION
13

14 Before the Court is Movant's 28 U.S.C. § 2255 Motion to Vacate, Set
15 Aside, or Correct Sentence by a Person in Federal Custody, filed May 2,
16 2006 (Ct. Rec. 137, CR-05-0105, Ct. Rec. 1, CV-06-0133). The Motion is
17 submitted by Raul S. Zavala, who is appearing *pro se* for the purposes of
18 these proceedings. Also before the Court are the following
19 miscellaneous motions: Petitioner's MOTION for Recusal (Ct. Rec. 190);
20 Petitioner's MOTION for Leave to File Excess Pages (Ct. Rec. 192);
21 Petitioner's MOTION to Stay (Ct. Rec. 198); Petitioner's MOTION to
22 Appoint Counsel (Ct. Rec. 200); Petitioner's MOTION for Hearing (Ct. Rec.
23 201); Petitioner's MOTION for Discovery (Ct. Rec. 202); Petitioner's
24 MOTION for Reconsideration re Ct. Rec. 205 Order (Ct. Rec. 206); and
25 Petitioner's MOTION for Leave to File (Ct. Rec. 207).

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1 **I. BACKGROUND**

2 Mr. Zavala was indicted on May 10, 2005 for Possession with Intent
3 to Distribute 500 Grams or More of Methamphetamine in violation of 21
4 U.S.C. § 841(a)(1) and Use of a Communication Facility to Facilitate the
5 Commission of a Felony, in violation of 21 U.S.C. § 843(b). Mr. Zavala
6 proceeded with trial on January 23, 2006 and the jury rendered a guilty
7 verdict on both counts on January 25, 2006. On April 18, 2006, Mr.
8 Zavala was sentenced to a mandatory term of life imprisonment on Count
9 1 and eight years on Count 2; and a special assessment of \$200.

10 Mr. Zavala, through counsel Ms. Lindholdt, filed a direct appeal of
11 his final judgment and sentence on April 24, 2006, pursuant to Fed. R.
12 App. P. 4(b)(1). On September 20, 2007, the Ninth Circuit Court of
13 Appeals affirmed the district court's decision. Ct. Rec. 170, 171. On
14 September 21, 2007, the district court dismissed Petitioner's 28 U.S.C.
15 § 2255 petition without prejudice pursuant to *Feldman v. Henman*, 815 F.2d
16 1318, 320 (9th Cir. 1987) without considering the merits of the petition.

17 On March 6, 2009, the Court entered an "Order Re: Miscellaneous
18 Motions," (Ct. Rec. 205) and stayed Petitioner's Motion for Recusal (Ct.
19 Rec. 190) pending the Ninth Circuit Court of Appeal's decision. On June
20 6, 2009, the Ninth Circuit transferred Petitioner's petition back to the
21 district court for consideration on the merits (Ct. Rec. 208).

22 **A. MOTION FOR RECUSAL**

23 The Court has considered Petitioner's "Affidavit of Bias," Ct. Rec.
24 138 and Petitioner's "Affidavit of Bias in Support of Petitioner's §2255
25 Motion and Motion For Stay of Proceedings Pursuant to Title 28 U.S.C.
26 §144 of the F.R.Civ.P.," Ct. Rec. 199.

1 Specifically, this motion is brought pursuant to 28 U.S.C. §144,
2 which addresses the timing and sufficiency of the affidavit regarding
3 bias or prejudice of a judge.

4 District courts maintain a wide range of discretion to decide
5 whether recusal is required. *See In re United States*, 158 F.3d 26, 30
6 (1st Cir.1998). Section 455(b)(1) of Title 28 of the United States Code,
7 requires a judge to disqualify himself "where he has a personal bias or
8 prejudice concerning a party, or personal knowledge of disputed
9 evidentiary facts concerning the proceeding." The standard for
10 determining disqualification does not turn on doubt concerning the
11 judge's impartiality in the mind of the judge or even the litigant, but
12 rather "whether a reasonable person would be convinced the judge was
13 biased." Recusal under section 455(b)(1) is required only if actual bias
14 or prejudice is proved by compelling evidence. Section 455(b)(1) is
15 primarily concerned with knowledge gained outside a courthouse, because
16 knowledge gained in a judicial capacity is typically on the record.
17 However, off the record briefings in chambers, by contrast, leave no
18 trace in the record and could potentially lead to "personal knowledge."

19 The purpose of section 455(a) is to promote public confidence in the
20 integrity of the judicial process, and that confidence "does not depend
21 on whether or not the judge actually knew of facts creating an appearance
22 of impropriety, so long as the public might reasonably believe that he
23 or she knew." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S.
24 847 (1988). In applying § 455(a), the judge's actual state of mind,
25 purity of heart, incorruptibility, or lack of partiality are not the
26 issue. *See, e.g., Hall v. Small Business Admin.*, 695 F.2d 175, 179 (5th

1 Cir.1983). The test in this circuit is whether an average, reasonable
2 person, knowing all the circumstances, would harbor doubts about the
3 judge's impartiality. *Milgard Tempering v. Selas Corp. Of America*, 902
4 F.2d 703, 714 (9th Cir. 1990).

5 Courts have stressed that "section 455(a) must not be so broadly
6 construed that it becomes, in effect, presumptive, so that recusal is
7 mandated upon the merest unsubstantiated suggestion of personal bias or
8 prejudice." *Franks v. Nimmo*, 796 F.2d 1230, 1234 (10th Cir.1986) (quoting
9 *United States v. Hines*, 696 F.2d at 729). The statute is not intended to
10 give litigants a veto power over sitting judges, or a vehicle for
11 obtaining a judge of their choice. *See, e.g., In re United States*, 666
12 F.2d 690, 694 (1st Cir.1981); *United States v. Greenough*, 782 F.2d 1556,
13 1558 (11th Cir.1986). Congress expressed concern over abusive invocation
14 of the statute by parties as a means of judge shopping, stating:

15 Nothing in this proposed legislation should be read to
16 warrant the transformation of a litigant's fear that a
17 judge may decide a question against him into a
18 "reasonable fear" that the judge will not be impartial.
Litigants ought not have to face a judge where there is
a reasonable question of impartiality, but they are not
entitled to judges of their own choice.

19 H.Rep. No. 1453, 93d Cong., 2d Sess. 1 (1974), reprinted in 1974 U.S.Code
20 Cong. & Admin. News 6351, 6355.

21 Generally recusal is unnecessary when the request is based upon 1)
22 rumor, speculation beliefs, conclusions, innuendo, suspicion, opinion,
23 and similar non-factual matters or when based upon 2) the judge's mere
24 familiarity with the defendant(s), or the type of charge, or kind of
25 defense presented. *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995).
26

1 As the First Circuit stated:

2 [W]hen considering disqualification, the
3 district court is not to use the standard of
4 "Caesar's wife," the standard of mere suspicion.
5 That is because the disqualification decision
6 must reflect not only the need to secure public
7 confidence through proceedings that appear
impartial, but also the need to prevent parties
from too easily obtaining the disqualification
of a judge, thereby potentially manipulating the
system for strategic reasons, perhaps to obtain
a judge more to their liking.

8 *In re Allied-Signal Inc.*, 891 F.2d 967, 970 (1st Cir.1989).

9 The Court has reviewed the motion for recusal and supporting
10 documentation filed (including affidavits of bias) and finds that the
11 motion lacks merit. Mr. Zavala's Motion For Recusal (Ct. Rec. 190)
12 primarily reargues evidence and testimony which was presented at trial
13 and was, according to Mr. Zavala, improperly permitted to be considered
14 by the jury. Because a number of the Court's rulings were adverse to
15 him, he concludes evidence of bias must be present and he argues that the
16 Court should have precluded admission of testimony from witnesses he
17 believes were not telling the truth. As the record reflects, a number
18 of witnesses testified to the facts surrounding Petitioner's arrest while
19 in possession of a significant quantity of drugs and no new information
20 has been brought forth suggesting that these witnesses should not have
21 been believed or that the conclusions reached by the jury were
22 inappropriate in light of all of the evidence which was considered
23 incident to deciding guilt or innocence.

24 The applicable test for recusal under the applicable statutes
25 requires the judge to evaluate the sufficiency of the affidavit to
26 determine if there is "bias in fact." *Murray v. International Revenue*

1 Serv. 923 F. Supp. 289, 292 (D. Idaho 1986), 923 F. Supp. at 1292 (citing
2 to *Berger v. United States*, 255 U.S. 22 (1921)). The law is well settled
3 that prior unfavorable rulings do not establish "bias in fact." *Id.* at
4 1292.

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6 **B. § 2255 MOTION**

7 Mr. Zavala contends that his sentence is unconstitutional based on
8 fifty-nine (59) grounds: 1) conviction obtained by use of evidence gained
9 pursuant to an unconstitutional search and seizure; 2) conviction obtained
10 by use of evidence gained pursuant to an unlawful arrest; 3) conviction
11 obtained by the unconstitutional failure of prosecution to disclose to
12 the defendant evidence favorable to defendant; 4) ineffective assistance
13 of counsel; 5) false statements were given to government agents by a
14 confidential informant; 6) alleged debriefings/notes not produced; 7)
15 unregistered confidential informant; 8) not a true and tried informant;
16 9) involuntary custodial consent; 10) sealing and recordation
17 requirements; 11) indictment obtained with known perjured testimony; 12)
18 prosecutor failed to inform jury of perjury; 13) perjury by five agents
19 and the confidential informant; 14) prosecutor procured false testimony;
20 15) tainted testimony; 16) agents failed to secure a warrant; 17) planned
21 warrantless arrest and search; 18) agents had no corroboration; 19)
22 agents had no personal knowledge; 20) reliability of confidential
23 informant; 21) no probable cause; 22) agents had more information,
24 contradicted their belief as to probable cause before arrest; 23) post
25 arrest identification; 24) unlawful seizure; 25) warrantless arrest; 26)
26 warrantless search of vehicle; 27) warrantless search of person; 28)

1 warrantless search of wallet; 29) warrantless search of phone; 30)
2 warrantless search of Nike box; 31) no exigent circumstances; 32)
3 prosecutorial misconduct; 33) malicious prosecution; 34) prosecutorial
4 vindictiveness; 35) non-expert witnesses; 36) anti-gratuity act
5 exchanging leniency and or immunity for testimony; 37) missing evidence;
6 38) manipulated evidence; 39) jury composition; 40) jury misconduct; 41)
7 speedy trial right; 42) breaks in chain of evidence; 43) tampering with
8 government witnesses; 44) inaccurate phone transcripts; 45) inaccurate
9 verbatim report of proceedings; 46) eliciting testimony; 47) misleading
10 the jury; 48) authenticity of evidence; 49) cumulative effect; 50) First
11 Amendment violation; 51) Fifth Amendment violation; 52) Eighth Amendment
12 violation; 53) after the alleged fact; 54) abuse of discretion; 55)
13 prosecution obstructed evidence; 56) Fourteenth Amendment violation; 57)
14 the alleged complaint (discrepancy); 58) conspiracy; and 59) additional
15 evidence. Ct. Rec. 137.

16 II. DISCUSSION

17 28 U.S.C. § 2255 provides, in part:

18 A prisoner in custody under sentence of a court
19 established by Act of Congress claiming the right to be
20 released upon the ground that the sentence was imposed
21 in violation of the Constitution or laws of the United
22 States, or that the court was without jurisdiction to
23 impose such sentence, or that the sentence was in excess
24 of the maximum authorized by law, or is otherwise
25 subject to collateral attack, may move the court which
26 imposed the sentence to vacate, set aside or correct the
sentence.

24 A petitioner is entitled to an evidentiary hearing on the motion to
25 vacate his sentence under 28 U.S.C. § 2255, unless the motions and the
26 files and records of the case conclusively show that the prisoner is

1 entitled to no relief. This inquiry necessitates a twofold analysis: (1)
2 whether the petitioner's allegations specifically delineate the factual
3 basis of his claim; and, (2) even where the allegations are specific,
4 whether the records, files and affidavits are conclusive against the
5 petitioner. *United States v. Taylor*, 648 F.2d 565, 573 (9th Cir.), cert.
6 denied, 454 U.S. 866 (1981) (internal quotations, citations and footnote
7 omitted).

8 The statute provides that only if the motion, file, and records
9 "conclusively show that the movant is entitled to no relief" may the
10 Court summarily dismiss the Motion without sending it to the United
11 States Attorney for response. 28 U.S.C. § 2255. The Rules regarding
12 section 2255 proceedings similarly state that the Court may summarily
13 order dismissal of a § 2255 motion without service upon the United States
14 Attorney only "if it plainly appears from the face of the motion and any
15 annexed exhibits and the prior proceedings in the case that the movant
16 is not entitled to relief in the district court." Rule 4(a), RULES-SECTION
17 2255 PROCEEDINGS. Thus, when a movant fails to state a claim upon which
18 relief can be granted or when the motion is incredible or patently
19 frivolous, the district court may summarily dismiss the motion. *Cf.*
20 *United States v. Burrows*, 872 F.2d 915, 917 (9th Cir. 1989); *Marrow v.*
21 *United States*, 772 F.2d 525, 526 (9th Cir. 1985).

22 The Court finds that the Movant has failed to show a constitutional
23 violation under any of the grounds. The claims he makes, to a
24 significant extent, involve reargument on matters raised at trial and
25 decided adversely to Movant. The Court will, however, discuss the first
26 four grounds as all other grounds thereafter are duplicative,

1 overlapping, or not articulated with allegations that specifically
2 delineate the factual basis of his claim upon which relief can be
3 granted.

4 **A. GROUND ONE-EVIDENCE GAINED THROUGH ILLEGAL SEARCH AND SEIZURE**

5 Mr. Zavala states that his conviction was obtained by use of
6 evidence gained pursuant to an unconstitutional search and seizure. In
7 support of ground one, Mr. Zavala states:

8 Defendant while inside vehicle and in a public place is
9 detained without incident in a felony stop manner
10 Defendant surrounded while inside vehicle by agents with
11 their weapons drawn, is forced out of the vehicle, is
questioned at gunpoint for his name and his person is
searched at gunpoint. Then forced to ground and at same
time vehicle being searched. No consent or warrant.

12 Ct. Rec. 137, at 5.

13 The Court held a suppression hearing beginning on November 8, 2005
14 and ending on December 12, 2005 for a total of 6.5 hours. The Court heard
15 testimony from three government witnesses: Sean Cummings, Joe E. Pence,
16 Jr. and Jay Merhing. Ct. Recs. 67, 82. The Court denied Defendant Raul
17 Zavala's Motion to Suppress Evidence Based On Warrantless Search and Lack
18 of Probable Cause in its order issued on December 15, 2005. Ct. Rec. 83.
19 The Court concluded, after hours of testimony, that reliability of the
20 informant and the accuracy of the information supplied was sufficiently
21 established for purposes of showing probable cause to arrest defendant
22 and search Mr. Zavala's Escalade.

23 Then at the start of trial, the Court considered Mr. Zavala's
24 renewed Motion to Dismiss Indictment with Prejudice; Motion to Suppress
25 Recordings; Motion to Suppress Search and Seisure [sic]; and Motion to
26 Suppress Arrest and Search of Vehicle Due to Lack of Exigent

1 Circumstances. The Court again denied these motions. The files and
2 records of this case conclusively show that Mr. Zavala is entitled to no
3 relief on this specific ground.

4 **B. GROUND TWO-EVIDENCE OBTAINED UNLAWFUL ARREST**

5 Mr. Zavala states that his conviction was obtained by use of
6 evidence obtained pursuant to unlawful arrest. In support of ground
7 two, Mr. Zavala states:

8 Defendant in public place and conduct did not constitute
9 a crime Defendant detained without incident, in vehicle,
10 in a felony stop manner, seized, blocked, searched
11 person at gunpoint and questioned for name, vehicle
12 being searched at same time, forced to ground then
handcuffed. Evidence recovered after unlawful arrest
was used to establish probable cause. No warrant, no
exigent circumstances, or consent.

13 Again, as discussed above under ground one, the Court held an
14 extensive suppression hearing wherein it determined that probable cause
15 existed to arrest Mr. Zavala. Further, the Court reconsidered Mr.
16 Zavala's motions to suppress evidence on the first day of trial. No new
17 evidence has been adduced to suggest that the Court's finding was in
18 error. Mr. Zavala is not entitled to relief on this claim.

19 **C. GROUND THREE-PROSECUTION CONCEALED EXCULPATORY EVIDENCE**

20 Mr. Zavala states that his conviction was obtained by the
21 unconstitutional failure of the prosecution to disclose evidence
22 favorable to him. In support of ground three, Mr. Zavala states:

23 Prosecution deliberately concealed exculpatory,
24 impeaching, and material evidence. Defense was not
25 aware of other co-defendants of CI, whom charges were
26 dropped, and not provided with prison or jail records,
plea agreements or promises. At trial it is confirmed
CI is a liar, commits perjury and testimony is
inconsistent. CI testifies promises were made to him by
prosecutor and government agent, prosecutor deliberately

1 failed to learn and deprived defense of favorable
2 evidence.

3 In response to Defendant Zavala's Motion for Disclosure of
4 Exculpatory Evidence (Ct. Rec. 84) filed December 27, 2005, the
5 government responded that it had provided the Defendant a copy of the
6 CI's plea agreement and that the CI agreed to cooperate in exchange for
7 a downward departure based on substantial assistance. The government also
8 responded that it had also provided the Defendant with a criminal history
9 of the CI and that his identity was already known by Defendant Zavala.
10 In addition, the government informed the defendant that it was calling
11 five witnesses who all work with the Drug Enforcement Agency in a law
12 enforcement capacity. The government also disclosed it would call a
13 drug chemist and that a chemist's analysis had been provided to the
14 Defendant. Finally, the government disclosed it would be calling an
15 interpreter who reviewed the tape recordings, and was an expert witness
16 in Spanish/English translation, for the purpose of authenticating the
17 tape recordings of the CI speaking with Defendant Zavala. Ct. Rec. 87.

18 It is not clear from Mr. Zavala's allegations in this § 2255 Motion
19 what evidence, of an exculpatory nature, was withheld by the prosecutor.
20 The Court concludes that Mr. Zavala is not entitled to relief on this
21 specific ground.

22 **D. GROUND FOUR-INEFFECTIVE ASSISTANCE OF COUNSEL**

23 In addressing the issue of ineffective assistance of counsel, the
24 Court is guided by the now-familiar construct of *Strickland v.*
25 *Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). As
26 required by that analytical framework:

1 First, the defendant must show that counsel's
2 performance was deficient. This requires showing that
3 counsel made errors so serious that counsel was not
4 functioning as the "counsel" guaranteed the defendant by
5 the Sixth Amendment. Second, the defendant must show
6 that the deficient performance prejudiced the defense.
7 This requires showing that counsel's errors were so
8 serious as to deprive the defendant of a fair trial, a
9 trial whose result is reliable.

10 *Id.* at 687.

11 In *Groseclose v. Bell*, 130 F.3d 1161, 1167 (6th Cir.1997),
12 discussing the first prong of the *Strickland* analysis, the Sixth Circuit
13 recognized:

14 The [Supreme] Court cautioned that in undertaking an
15 ineffective-assistance review, "[j]udicial scrutiny of
16 counsel's performance must be highly deferential," and
17 must avoid the "second-guess[ing of] counsel's
18 assistance ..., [as] it is all too easy for a court,
19 examining counsel's defense after it has proved
20 unsuccessful, to conclude that a particular act or
21 omission of counsel was unreasonable." *Strickland*, 466
22 U.S. at 689 In order to avoid "the distorting
23 effects of hindsight," a reviewing "court must indulge
24 a strong presumption that counsel's conduct falls within
25 the wide range of reasonable professional assistance;
26 that is, the defendant must overcome the presumption
that ... the challenged action 'might be considered
sound trial strategy.'" ' *Id.* (citation omitted).

1 Furthermore, in evaluating the prejudice suffered by a petitioner
2 as a result of alleged ineffective assistance of counsel, "[i]t is not
3 enough for the defendant to show that the errors had some conceivable
4 effect on the outcome of the proceeding." *Strickland*, 466 U.S. at 693.
5 Indeed, "[v]irtually every act or omission of counsel would meet that
6 test, and not every error that conceivably could have influenced the
7 outcome undermines the reliability of the result of the proceeding." *Id.*
8 (citation omitted). Rather, the petitioner "must show that there is a
9 reasonable probability that, but for counsel's unprofessional errors, the

1 result of the proceeding would have been different. A reasonable
2 probability is a probability sufficient to undermine confidence in the
3 outcome." *Id.* at 694.

4 Finally, in conducting this inquiry, we need not apply *Strickland's*
5 principles in a mechanical fashion. As the Supreme Court explained:

6 [A] court need not determine whether counsel's
7 performance was deficient before examining the prejudice
8 suffered by the defendant as a result of the alleged
9 deficiencies. The object of an ineffectiveness claim is
10 not to grade counsel's performance. If it is easier to
11 dispose of an ineffectiveness claim on the ground of
12 lack of sufficient prejudice, which we expect will often
13 be so, that course should be followed.

14 *Id.* at 697.

15 The Court begins its review by either determining whether counsel's
16 performance was deficient, or by determining any possible prejudice
17 suffered by Mr. Zavala. In either event, the result in this case is
18 identical.

19 According to Mr. Zavala, "[he] was deprived of excercising [sic] his
20 right to effective assistance of counsel by way of unacceptable
21 communication, ill advised, failed to object to issues, failed to submit
22 motions, failed to investigate potential leads, unethical conduct, breach
23 and or break in loyalty, and most of all deception. Mr. Zavala further
24 alleges that "Defendant can't even have a simple and reasonable request
25 granted. Failed to object to the presentation of non-authentic alleged
26 evidence." Ct. Rec. 137, at 6.

Mr. Zavala has not demonstrated under *Strickland* that, considering
all the circumstances, counsel's performance fell below the objective
standard of reasonableness and so prejudiced him that he was denied a

1 fair trial and a reasonable probability exists that, but for counsel's
2 conduct, the result would have been different. *Strickland*, 466 U.S. at
3 693.

4 The record contains no evidence that Mr. Zavala's attorney breached
5 his ethical duty or other duties in representing the Movant. Based on
6 the information before it, the Court finds that rather than alleged
7 deception and unethical conduct, defense counsel conducted himself with
8 competent professionalism at pre-trial, trial and the sentencing
9 hearing(s). Given Mr. Zavala's criminal history, and the evidence
10 confronting him, there is no indication that Mr. Zavala was prejudiced,
11 i.e., that he would have received a lesser sentence.

12 Federal court review presumes that an attorney is competent and the
13 burden rests upon the defendant to show a constitutional violation.
14 *United States v. Pierce*, 62 F.3d 818, 833 (6th Cir.1995). Moreover, a
15 strong presumption exists that counsel's behavior lies within the wide
16 range of reasonable professional assistance. *O'Hara v. Wigginton*, 24
17 F.3d 823, 827 (6th Cir.1994). The Court finds that the Movant has not
18 met his burden to show a constitutional violation occurred for relief
19 under ground four.

20 The Movant is not entitled to an evidentiary hearing on the motion
21 to vacate his sentence under 28 U.S.C. § 2255. Additionally, the Court
22 summarily dismisses the Motion without sending it to the United States
23 Attorney for response. Accordingly,

24 **IT IS ORDERED** that:

25 1. Mr. Zavala's Motion for Recusal, **Ct. Rec. 190**, which was stayed
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1 pending the Ninth Circuit's decision, is **DENIED** for the foregoing
2 reasons.

3 2. Mr. Zavala's Motion to Vacate, Set Aside, or Correct Sentence by
4 a Person in Federal Custody, filed May 2, 2006 (Ct. Rec. 137, CR-05-0105,
5 Ct. Rec. 1, CV-06-0133) is **DENIED**.

6 3. Mr. Zavala's Motion For Leave to File Excess Pages, **Ct. Rec.**
7 **192**, is **GRANTED**.

8 4. Mr. Zavala's Motion to Stay, **Ct. Rec. 198**, is **DENIED** as MOOT.

9 5. Mr. Zavala's Motion to Appoint Counsel, **Ct. Rec. 200**, is **DENIED**.

10 The Court finds Petitioner has no difficulty articulating his claims.
11 The Court further finds that the legal issues are not so complex that
12 Petitioner cannot proceed *pro se*. While Petitioner is free to pursue
13 efforts to secure private counsel, the Court has no duty to assist in
14 such efforts where no exceptional circumstances exist. *United States v.*
15 *30.64 Acres of Land*, 795 F.2d 796, 799, 804 (9th Cir.1986).

16 6. Mr. Zavala's Motion for Hearing, **Ct. Rec. 201**, is **DENIED**, for
17 the reasons stated above.

18 7. Mr. Zavala's Motion for Discovery, **Ct. Rec. 202**, is **DENIED**.

19 8. Mr. Zavala's Motion for Reconsideration to Vacate March 6, 2009
20 Judgment (Ct. Rec. 205), **Ct. Rec. 206**, is **DENIED**, however, the Court
21 notes that the portions of Ct. Rec. 205 staying various motions pending
22 the Ninth Circuit's decision, are now **MOOT inasfar as the Ninth Circuit**
23 **has issued its Order dated June 1, 2009**.

24 Motions for reconsideration serve a limited function. Under the
25 Federal Rules of Civil Procedure, motions for reconsideration may be made
26 pursuant to Rule 59(e). The major grounds for granting a motion to

1 reconsider a judgment are: (1) intervening change of controlling law; (2)
2 availability of new evidence; and (3) the need to correct clear error or
3 prevent manifest injustice. *School District No. 1J, Multnomah County*
4 *Oregon v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993). A motion for
5 reconsideration is not appropriately brought to present arguments already
6 considered by the Court. *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th
7 Cir.1985). Plaintiff does not argue that there has been a change of
8 controlling law, or that new evidence is available, but expressly argues
9 that the Court committed error of law or fact on the face of the record.
10 Ct. Rec. 206 at 1.

11 The undersigned judicial officer concludes that "clear error" did
12 not occur in its order re: miscellaneous motions, and there is no
13 "manifest injustice" to the Petitioner from that ruling, and new evidence
14 has not been presented which would change the Court's earlier order.
15 According, there is no basis for reconsideration of the Court's March 6,
16 2009 Order (Ct. Rec. 205).

17 9. Mr. Zavala's Motion for Leave to File Supplemental Motion for
18 Reconsideration Pursuant to FRCP 15(d) With Supplemental Authority, **Ct.**
19 **Rec. 207**, is **DENIED**. The Ninth Circuit has ruled that the 28 U.S.C.
20 §2255 petition filed in the district court on January 12, 2009 (Ct. Rec.
21 193) is not a second or successive petition subject to the requirements
22 of 28 U.S.C. §2244(b)(3)(A). This petition will be decided in a
23 subsequent order.

24 10. The District Court Executive is directed to:

25 (a) File this Order;
26

1 (b) Provide a copy to Movant **AND TO** the United States Attorney,
2 **Spokane, Washington;** and

3 (c) CLOSE CV-06-0133-LRS.

4 **DATED** this 25th day of June, 2009.

5
6 ***s/Lonny R. Suko***

7 _____
8 LONNY R. SUKO
9 UNITED STATES DISTRICT JUDGE
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